U.S. Department of Justice

Immigration and Naturalization Service

B9

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

JAN 30 2003

FILE: [redacted] Office: Vermont Service Center Date:
EAC 00 117 50587

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER: Self-represented

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed.

The petitioner is a native and citizen of Jamaica who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition after determining that the petitioner had not established that she: (1) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; and (2) entered into the marriage to the citizen or lawful permanent resident in good faith.

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusions and dismissed the appeal on May 10, 2002.

On motion, the petitioner asserts that the "hearing officer" completely missed the fact that she was the petitioner and that her ex-husband got the restraining order unilaterally. The petitioner further asserts that after finding out about her husband's restraining order, she filed her own restraining order; a contested hearing was held in the courts on December 19, 1997; the court heard both parties and granted her a restraining order because of her husband's threats and abuse. The petitioner states that since "the judge found favor in me, the petitioner [redacted] and granted the restrainer for my husband [redacted] for his violence and threat; the INS is collateral estop to revisit this issue. Stated again briefly, that the law of collateral is binding on the INS."

Though the record contains a copy of the applicant's response to the restraining order filed by her husband, the final judgement, also contained in the record, names her as the respondent and orders the respondent to have no contact with the petitioner (her husband). There is no evidence in the record to support her assertion that the judge found in favor of the applicant.

The director and the Associate Commissioner reviewed all evidence contained in the record of proceeding and determined that the evidence furnished by the petitioner was insufficient to establish that she had been the subject of extreme cruelty perpetrated by the citizen spouse during their marriage. The Associate Commissioner also reviewed the restraining order and further determined that the order did not establish that the petitioner was, in fact, the subject of extreme cruelty. No evidence was furnished, on motion,

to corroborate her claim of extreme cruelty pursuant to 8 C.F.R. 204.2(c)(1)(i)(E). Additionally, the petitioner neither addressed nor submitted evidence to overcome the findings of the director and the Associate Commissioner that the petitioner had failed to establish that she entered into the marriage to the U.S. citizen in good faith, pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

In Matter of Morales, 15 I&N Dec. 411 (BIA 1975), the Board of Immigration Appeals stated that there have been several court cases indicating that, under certain circumstances, the doctrine of equitable estoppel is applicable to the Federal government. However, it knows of no Supreme Court decision specifically endorsing this view. In INS v. Hibi, 414 U.S. 5 (1973), the Supreme Court indicated that, if applicable at all, estoppel could only arise after "affirmative misconduct" on the part of the government. See Matter of Hernandez-Puente, 20 I&N Dec. 335, 338 (BIA 1991).

The actions taken in this matter were based on documented evidence, and conclusions were made based on that evidence. The Associate Commissioner finds no evidence of affirmative misconduct to support the applicant's estoppel argument.

As provided in 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A review of the record reflects that the director, in his decision, reviewed and discussed the evidence furnished by the petitioner to establish that she qualifies for the benefit sought. The Associate Commissioner also reviewed the evidence furnished and concurred with the director's conclusion that the petitioner failed to establish that she qualifies for the benefit sought. The petitioner has presented no new facts or other documentary evidence in support of the motion to reopen.

Accordingly, the motion will be dismissed.

ORDER: The decision of the Associate Commissioner dated May 10, 2002, is affirmed.